Chardon Rubber Company *and* United Steelworkers of America, AFL–CIO. Case 8–CA–32420

September 20, 2001

DECISION AND ORDER

BY MEMBERS LIEBMAN, TRUESDALE, AND WALSH

Pursuant to a charge filed on May 21, 2001, the General Counsel of the National Labor Relations Board issued a complaint on June 8, 2001, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 8–RC–16104. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, with affirmative defenses, admitting in part and denying in part the allegations in the complaint.

On July 2, 2001, the General Counsel filed a Motion for Summary Judgment. On July 9, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer, the Respondent admits its refusal to bargain but attacks the validity of the certification on the basis that shift leaders were improperly excluded from the bargaining unit in the representation proceeding.[1]

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding.[2] We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.[3]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, an Ohio corporation with an office and place of business located in Alliance, Ohio, has been engaged in the operation of a rubber injection molding facility where it fabricates parts for the appliance industry. Annually, in the course and conduct of its business, the Respondent sells and ships products valued in excess of $50,000 directly to points located outside the State of Ohio.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held October 6, 2000, the Union was certified on March 19, 2001, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All production and maintenance employees employed at the Employer's 15825 Armour Road, Alliance, Ohio facility, but excluding all managerial employees, office clerical employees, confidential employees, professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

About April 2, 2001, the Union, by letter, requested that the Respondent recognize and bargain, and, about

[1] The Respondent's answer also denies that the certified unit is appropriate. The Respondent, however, stipulated that this unit was appropriate in the underlying representation proceeding. Any questions regarding the appropriateness of the unit could and should have been raised in the representation proceeding. *Playhouse Square Foundation*, 291 NLRB 995 fn. 1 (1988), enf. denied on other grounds 942 F.2d 369 (6th Cir. 1991).

[2] By way of an affirmative defense, the Respondent asserts that the charge did not name the proper employer as a party and was not properly served. Although the charge contained a typographical error in the Respondent's name, the correct name and address were listed in the affidavit of service and the Respondent was correctly identified in the complaint. In addition, the Board has long held that procedural requirements regarding proof of service should be liberally construed, and that when charges have in fact been received, technical defects in the form of service do not affect the validity of service. *Control Services*, 303 NLRB 481 (1991), enfd. mem. 961 F.2d 1568 (3d Cir. 1992).

The Respondent further asserts that the Regional Director improperly shifted the burden to the Respondent to show that the shift leaders were not supervisors, contrary to *NLRB v. Kentucky River Community Care, Inc*., 532 U.S. 706 (2001). The hearing officer in his report on challenged ballots thoroughly analyzed the evidence presented by the Union to establish that the shift leaders are supervisors. He did not shift the burden of proof on this issue to the Respondent.

[3] The Respondent's requests that this matter be dismissed and that it be awarded its costs, attorneys' fees, and any other relief are therefore denied.

April 12, 2001, the Respondent refused.[4] We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after April 12, 2001, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co*., 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co*., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Chardon Rubber Company, Alliance, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Steelworkers of America, AFL–CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All production and maintenance employees employed at the Employer's 15825 Armour Road, Alliance, Ohio facility, but excluding all managerial employees, office clerical employees, confidential employees, professional employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Alliance, Ohio, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 12, 2001.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Steelworkers of America, AFL–CIO, as the exclusive representative of the employees in the bargaining unit.

[4] The Respondent admits that by letter dated April 2, 2001, the Union requested it to recognize and bargain, and that by letter dated May 15, 2001, it refused. The Respondent denies that by letter dated April 12, 2001, it acknowledged the Union's April 2, 2001 letter and implicitly refused to bargain. The Respondent's April 12 letter, which the General Counsel attached to its motion, clearly states that "we have received your letter dated April 2, 2001 regarding your request to schedule negotiations. We are continuing to consider our options and will communicate with you regarding how we decide to respond." The Respondent has not contested the authenticity of this document. In these circumstances, we find that the Respondent has effectively refused to bargain with the Union since April 12, 2001, as alleged in the complaint.

[5] If this Order is enforced by a judgment of the United States court of appeals, the words in the notice "Posted by Order of the National Labor Relations Board'' shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All production and maintenance employees employed at our 15825 Armour Road, Alliance, Ohio facility, but excluding all managerial employees, office clerical employees, confidential employees, professional employees, guards and supervisors as defined in the Act.

CHARDON RUBBER COMPANY